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21 September 1984

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence
Executive Director

FROM: Harry E. Fitzwater
Deputy Director for Administration

SUBJECT: New Building Construction

1. On 17 September, we learned of a meeting that had taken place between GSA, the Small Business Administration (SBA), and Committee staffers of the House Committee on Small Business. The meeting had been called by the Committee staffers probably at the instigation of Hanford Jones, President of the National and Maryland Minority Contractors, and Congressman Parren J. Mitchell (D MD), Chairman of the Committee on Small Business. The mood of the meeting was described as belligerent with GSA being accused of not doing enough to involve small and disadvantaged business participation in the first two major contracts of the Headquarters expansion. In this meeting there was an implied threat of cutting off appropriations for the new building unless some serious consideration was taken of the SBA having an opportunity to treat the entire final construction contract as a small business set-aside. The belligerence and pressure were from Committee staffers with SBA representatives setting quietly through the meeting. The end result of the meeting was to pressure GSA into agreeing to treat the entire final construction contract as a set-aside. GSA agreed to provide the technical requirements document to the SBA and allow them several weeks to present GSA with a qualified bidder. If such a bidder is provided, and GSA finds no problem with the suggested firm(s), then the contract would become a negotiated procurement rather than a competitively bid contract. SBA would then act as the general contractor for GSA. Under this condition, SBA must approve GSA's proposal, evaluation and selection of firm(s).

2. GSA has advised us that there are possibly two options at this time. That is (a) to cooperate with GSA on their agreement with SBA and await their determination of a qualified contractor being identified or that there are none suitable for this large job; or (b) withhold our funds from GSA and

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explore alternative methods of contracting. The risk associated with the first alternative is that GSA might find itself in the position of having to accept a contractor(s) certified by SBA as being qualified and we are then faced with the fact of much higher costs and probable construction delays. The second alternative doesn't offer much either since we lack the resources to contract for and manage such a large program. Also, we are vulnerable to Congressional action that might include altering our Authorization Bill to include Congress dictating construction by small business. If we go along with GSA, we are faced with as many pitfalls as pulling out our funding.

3. On 20 September, I hosted a luncheon for Mr. Ray Kline, Acting Administrator of GSA, to discuss the above problem. Ray is very sympathetic and ready to cooperate as much as possible in resolving the problem in our favor. Discussions at this luncheon indicate the following:

a. The problem originates with Hansford Jones and Congressman Parren J. Mitchell (D MD).

b. The SBA, upon receipt of a technical requirements document would determine whether they had any minority or small business contractor(s) capable of handling the total job or any portion thereof.

c. SBA notifies GSA contracting officer who either accepts or rejects the recommendation within five days. Rejection can be appealed by the SBA within 15 days and the GSA Administrator returns his decision within 30 days to the SBA. The GSA Administrator's decision is final. If GSA accepts the SBA recommendation, then the SBA acts as a general contractor for GSA although GSA ends up doing all the leg work with SBA acting as a broker for firms they select to do all or part of the job. Further, if the National and Maryland Minority Contractors object to the GSA Administrator's decision, they may protest to the GAO or seek remedy through a court injunction to stop the work or hold up contract award.

4. To preclude the risk of the above and protracted delays to the project, I suggested to Ray Kline that we meet jointly with Jim Sanders, SBA Administrator, to determine if we could work something out in terms of a set-aside. It is possible that we could carve out portions of the work that were not on the critical path and which could be performed by minority or small business firms, either as a directed subcontract plan to the winning contractor or as an SBA set-aside. Ray Kline agreed that that idea had merit and has agreed to ask his people to determine the pros and cons of our meeting with Sanders to see if we can't work out something that is acceptable to SBA and does not put the project at risk. In addition, GSA will determine whether we should continue with our competitive bid package as planned with carve-outs

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being identified for separate pricing which will facilitate subsequent set-aside for small business if necessary. After receipt of this information from GSA, we will determine the next course of action.

5. The major dangers we face are that we do not at this time have an appropriation for the [redacted] I do not know whether we can consider the continuing resolution as a continuation of our initial appropriation but have serious doubts that it does. Secondly, we are subject to long, drawn out procedures if we are faced with an injunction. In my estimation, it is best that we continue to approach this as we discussed with Ray Kline and try to work something out with SBA that both of us can live with. STAT

[redacted] STAT

Harry E. Fitzwater

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